S.B.CRIMINAL MISC. PETITION NO.1517/2006

Date : 07.08.2007

HON'BLE MR. SATYA PRAKASH PATHAK, J.

Mr. J.S. Bhati for the petitioner.
Mr. Ashok Upadhyay Public Prosecutor for the State.

By moving the present criminal misc. petition under Section 482 Cr.P.C., the petitioner has challenged the order dated 02.08.2006 passed by learned Judicial Magistrate No.3, Jodhpur, whereby the learned trial court took cognizance against the petitioner for the offences under Section 22/119C of the Rajasthan Panchayati Raj Act, 1994 and Section 134 of the Representation of People Act, 1951 and issued process against the petitioner to face trial.

The contention of learned counsel for the petitioner is that in the instant case while accepting Final Report no reasons have been assigned. He submits that the petitioner is a Government Servant and allegation against him is that he did not participate in the election duty. His submission is that in the Final Report the matter has been discussed in detail whereas in the impugned order nothing has been discussed about the Final Report

and no reasons have been assigned for taking cognizance against the petitioner.

On the other hand, learned Public Prosecutor submits that the learned trial court by the impugned order has rightly taken cognizance against the petitioner, therefore, same requires to be maintained.

I have considered the submissions made before me and perused the impugned order.

Learned counsel for the petitioner has placed reliance on the judgments reported in 2006 (2) R.Cr.D. 10 (Raj.) (Bhagwan Sahai Khandelwal & Ors. Vs. State of Rajasthan & Anr.), and 2007 WLC 153 (Hanumana Ram & Ors. Vs. State & Ors.).

It is to be noted that no reasons are available to show that there is application of mind while passing the impugned order while deciding the Final Report and in the circumstances, it was necessary to have passed a detailed order, therefore, in my opinion, the order impugned dated 02.08.2006 passed by learned

Judicial Magistrate No.3, Jodhpur requires to be set aside.

Accordingly, the misc. petition is allowed and the order dated 02.08.2006 passed by the learned Judicial Magistrate No.3, Jodhpur in Final Report No.207/2005 in connection with FIR No.79/2005 is set aside and the matter is remitted back to the learned trial court with direction to decide the matter afresh after hearing both the sides taking in view the final report submitted in the matter and thereafter to pass appropriate orders in accordance with law.

(SATYA PRAKASH PATHAK), J.

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